COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 32 of 2002

Rajesh Kumar Vaishya … **Appellant.**

Versus

Smt. Manju Pandey
and others. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, (***in short the Act***) against the judgment and Award dated 29-11-2001 passed in M.A.C. T. Petition No. 13 of 1997, Smt. Manju Pande & others Vs. Rajes Kumar Vaishya & others, by Motor Accident Claims Tribunal/Addl. District Judge, Haldwani ***(in short the Tribunal),*** where by the learned Tribunal has allowed the claim petition and has awarded Rs. 6,16,000/- along with interest @ 9% per annum as compensation in favour of the claimant-appellants under Section 166 of the Act and against the Opposite Parties jointly and severally. Aggrieved, the alleged owner of the Truck No UP-A-9540 has come up in appeal to set aside the impugned judgment and award of the Tribunal mainly on the ground that on the date of accident, he was not the owner of the vehicle involved in the accident, because the truck had already been sold to respondent no. 6 Ramesh Kumar, therefore, the finding to the contrary of the Tribunal is perverse.

Brief facts giving rise to the present appeal are that on 22-6-1996 Bhariab Datt Pande was taking tea at about 8-30 p.m. in as shop at gate No. 2 of PCF Soyabean Factory Haldu Chaur. In the meantime, the offending truck No. U.P.A.-9540 being driven rashly and negligently came from the side of Haldwani and hit the deceased Bhairab Datt, who sustained grievous as a result thereof. He was

rushed to S.S.Jina Base Hospital, where he succumbed to his injuries on the same night. The deceased is said to be earning Rs. 4899/-per month as salary, therefore, claim petition has been preferred by his legal heirs/dependents. The O.P. No.1, owner of the offending truck. has contested the case and has asserted that the said truck was sold by him to one Ramesh Kumar (O.P.No.3) prior to the accident and he (answering O.P.) was not in possession of the offending truck. He has no concerned with the said vehicle. The O.P.No.2, Harpal Singh, and O.P. No.3, Ramesh Kumar have not field any written statement and have also not contested the case, therefore, the case proceeded ex-parte against them.

On the pleadings of the parties, the Tribunal has framed three issues in the case. Ultimately, the learned Tribunal has held on Issue No.1 that the accident in question has occurred due to rash and negligent driving by the driver of the offending truck resulting into grievous injuries and death of the deceased. On Issue No.2, relating to the ownership of the offending truck and his liability to pay compensation, the Tribunal after perusing the entire material on record, has found that the O.P.No.1-appellant has got the truck released in his favour, alleging himself registered owner of the truck, when the same had been seized after the motor accident. Ultimately, he has decided the issue against the o.p.No.1. The learned Tribunal on Issue No.3 has found that the claimants are entitled to get total compensation of Rs. 6,16,000/- along with interest @ 9% per annum and accordingly, the Tribunal has decreed the claim petition in favour of the claimants against the opposite parties jointly and severally.

We have heard learned counsel for the appellant, Sri Tanveer, Alam Khan, at length and have carefully perused the entire material on record including the impugned judgment and award.

It has been vehemently argued on behalf of the appellant before us that in the case under appeal, it has been proved

on record by documentary evidence that the offending Truck which was previously registered in the name of the appellant had already been sold in favour of respondent no.6 (O.P. No.3) Ramesh Kumar on 31.1.96 by way of a written agreement, therefore, it has been submitted that the appellant was not the owner of the vehicle on the date of accident, which occurred on 22-6-1996, therefore, the appellant cannot be held liable to pay compensation in the present case. Reference has been made to paper no. Annexure-2 appended to the memo of appeal. We have seriously considered the submissions made on behalf of the appellant with the help of the material on record including the alleged agreement to sell. We are not inclined to accept the contention of the learned counsel for the appellant for the reasons, firstly, that from the bare perusal of this document it is apparent that in the last line of the agreement deed is is clearly over typing on the date. Even from a naked eye, it is crystal clear that date 6.7.96 has been changed to 31.1.96, therefore, this overtying creates a reasonable doubt to the genuineness of the document. Secondly, it has not been explained anywhere on record that the compliance of Section 50 of the Motor Vehicles Act, 1988 has ever been made by the transferor. There is not a single whisper that the fact of transfer of vehicle was ever reported to the registering authority as envisaged by Section 50(1)(a)(i) of the Act. The learned counsel for the appellant too could not explain the omission on the part of the appellant in this respect. ***Thirdly,*** the appellant Rajesh Kumar Vaishya has appeared in the witness box before the Tribunal, as D.W.1, who has stated in his examination-in-chief that he had handed over the sale letter along with NOC (no objection certificate) to the O.P.No.3 Ramesh Kumar, who had assured him to get the vehicle transferred in his name by transfer. After 31-1-96, he ceased to be owner of the vehicle. This witness has further stated that he was not the owner of the truck on 22.6.96; but in the cross-examination, the appellant has admitted that after seizure of the truck after the incident, he had got the truck released in his favour. It is very strange that when, according to the appellant himself, he had sold the vehicle for a consideration of Rs. 1,10,000/- and had

received the entire amount of sale-consideration, as mentioned in the agreement of sale, then there was no occasion for the appellant, alleging himself to be the owner of the truck, to have released the truck in his favour, from the court of the Magistrate, after about six months of the alleged sale. This is very strong circumstance, which goes against the appellant and it goes to the root of the matter that in fact, the appellant was fully aware that he was the owner of the vehicle on the date of accident. The conduct of the appellant in the circumstances of the case speaks volumes against his stand before the Tribunal. ***Lastly***, the most important witnesses, which would have supported the contention of the appellant, were the O.P.No.3, Ramesh Kumar, and the attesting witness of agreement of sale, namely Ramesh Chandra Sharma and J.P.Arora, who have allegedly signed the document (Annexure-2) on 31.1.1996 as attesting witnesses of the document, have not been produced before the Tribunal. It may be mentioned that in the case under appeal, neither driver Harpal Singh, who was driving the offending vehicle, nor Ramesh Kumar, the alleged transferee of the vehicle, has put in appearance to file written statement and contest the case despite service on them. Moreover, it has been held by the Hon'ble Supreme Court in the case of ***"Dr. T.V.Jose Vs. Chacko P.M. alias Thankachan and others"[(2001) 8 SCC 748]*** that transfer of ownership by payment of consideration and delivery of vehicle is permissible, but during the continuance of the transferor's name on the records of the registering authority, the transferor would remain liable to third parties. In view of the aforesaid case-law, in any view of the matter, no benefit goes in favour of the appellant in the present case, therefore, in the fact and circumstances of the case, none of the contentions raised on behalf of the appellant is tenable. The learned Tribunal in its judgment and order, under appeal, has elaborately the entire evidence and in our opinion, the Tribunal was justified in awarding the compensation against all the opposite parties jointly and severally. Nothing has been shown to us so as to warrant interference with the findings of the learned Tribunal.

No other point was urged or argued before us in this appeal.

Ultimately, the appeal lacks merits and is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount, if any, deposited with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

27-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP